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INTUIT INC.

7
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10 Plaintiff, *In Pro Per*

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION
15

16 DANIEL J. BURKHART,
17 Plaintiff,

18 v.

19 INTUIT, INC. a corporation and DOE
20 Corporations, 1 through 10; STEPHEN M.
21 BENNETT, an individual; BRAD D. SMITH,
an individual; JEAN-PAUL GUILBAULT, an
22 individual; JENNY PERRY, an individual;
LAURA MAULER, an individual; JOHN
DOES 1 through 50, as individuals,,

23 Defendants.
24

Case No. C07 03751 PVT

**STIPULATION AND [PROPOSED]
ORDER FOR DISMISSAL OF
INDIVIDUAL DEFENDANTS AND
TRANSFER OF CASE TO DISTRICT
OF ARIZONA, TUCSON DIVISION**

25
26 Plaintiff Daniel J. Burkhart, *in pro per*, and Defendants Intuit Inc., Stephen M.
27 Bennett, Brad D. Smith, Jean-Paul Guilbault, Jenny Perry and Laura Mauler, through Orrick,
28 Herrington & Sutcliffe LLP, appearing specially on their behalf, hereby enter into the following

1 Stipulation and ask the Court to enter the Orders listed below.

2 **STIPULATION**

3 Plaintiff Daniel J. Burkhart commenced this action on or about July 20, 2007.

4 Plaintiff has not served the Complaint and Summons on any Defendant.

5 On or about September 21, 2007, the Court entered an Order granting Plaintiff's
6 petition to proceed *in forma pauperis*, permitting service of process to be executed by the U.S.
7 Marshals Service. It is the Parties' understanding that the Clerk of the Court is awaiting further
8 information from Plaintiff (correct addresses for all defendants) and has not yet directed the
9 Court's service order to the U.S. Marshals Service, and no action has been taken by the U.S.
10 Marshals Service to serve the Complaint upon any of the defendants. See Docket Entry dated
11 10/09/2007.

12 Plaintiff and Defendants agree that venue in the Northern District of California is
13 improper under 28 U.S.C. § 1391(b) because the events or omissions giving rise to Plaintiff's
14 claims occurred in Arizona, and not all defendants live in the same state. Further, the Parties
15 agree that proper venue under 28 U.S.C. § 1391(b) lies in Arizona, Tucson Division.

16 Plaintiff and Defendants further agree that there is no basis for asserting claims
17 under or based upon alleged violations of the Americans with Disabilities Act, against the
18 individual defendants named in this case, pursuant to established Ninth Circuit precedent. *See*
19 *Miller v. Maxwell's Int'l, Inc.*, 991 F.2d 583, 587 (9th Cir. 1993). Accordingly, the Parties agree
20 that all individually named defendants – Stephen M. Bennett, Brad D. Smith, Jean-Paul Guilbault,
21 Jenny Perry and Laura Mauler – should be dismissed from this action with prejudice.

22 Further, Defendant Intuit Inc. agrees that upon entry of the Orders set out below,
23 and notice from the Court in the District of Arizona of completion of the transfer, Intuit Inc. will
24 agree to waive the requirement of formal service of process pursuant to Federal Rule of Civil
25 Procedure 4(d).

26 Based on the foregoing, the Parties jointly request that the Court enter the
27 following Orders:

- 28 1. Individuals who are not the employer cannot, as a matter of law, be liable

1 to Plaintiff for alleged violations of the Americans with Disabilities Act. Accordingly, Plaintiff's
2 claims against defendants Stephen M. Bennett, Brad D. Smith, Jean-Paul Guilbault, Jenny Perry
3 and Laura Mauler are DISMISSED WITH PREJUDICE.

4 2. Venue is not proper in the Northern District of California. Rather, venue is
5 proper in the District of Arizona. Pursuant to 28 U.S.C. § 1406(a), the Court finds that transfer
6 rather than dismissal serves the interests of justice. Therefore, the Court orders that the entire
7 action shall be TRANSFERRED to the District of Arizona, Tucson Division.

8 3. The Order entered September 21, 2007, ordering that the U.S. Marshals
9 Service for the Northern District of California serve process and other papers on defendants, is
10 VACATED. Intuit Inc. must waive service of process pursuant to Federal Rule of Civil
11 Procedure 4(d) upon Notice that the transfer of this matter to the District of Arizona is completed.

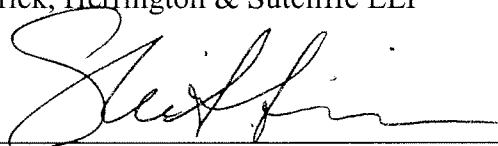
12
13 Dated: October 25, 2007



DANIEL J. BURKHART
Plaintiff In Pro Se

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15
16 Dated: October 30, 2007

LYNNE C. HERMLE
MICHAEL APARICIO
Orrick, Herrington & Sutcliffe LLP



MICHAEL A. APARICIO
Attorneys for Defendant
INTUIT INC.

22 **ORDER**

23 Pursuant to Stipulation, IT IS SO ORDERED.

24 Dated:

25
26 Patricia V. Trumbull
United States Magistrate Judge

CERTIFICATE OF SERVICE BY MAIL

I am more than eighteen years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe LLP, 1000 Marsh Road, Menlo Park, California 94025. On October 30, 2007, I served the following document(s):

**STIPULATION AND [PROPOSED] ORDER FOR DISMISSAL OF
INDIVIDUAL DEFENDANTS AND TRANSFER OF CASE TO DISTRICT
OF ARIZONA, TUCSON DIVISION**

on the interested parties in this action by placing true and correct copies thereof in sealed envelope(s) addressed as follows:

Daniel J. Burkhart
9473 N. Albatross Drive
Tucson, AZ 85742

I am employed in the county from which the mailing occurred. On the date indicated above, I placed the sealed envelope(s) for collection and mailing at this firm's office business address indicated above. I am readily familiar with this firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the firm's correspondence would be deposited with the United States Postal Service on this same date with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 30, 2007, at Menlo Park, California.



Josette L. Romero